United Nations CED/C/SR.162

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Tenth session

Summary record of the 162nd meeting
Held at the Palais des Nations, Geneva, on Wednesday, 9 March 2016, at 3 p.m.

Chair: Mr. Decaux

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Initial report of Kazakhstan

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Kazakhstan (CED/C/KAZ/1; CED/C/KAZ/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Kazakhstan took places at the Committee table.*

2. **Mr. Zhakupov** (Kazakhstan), introducing the initial report of Kazakhstan (CED/C/KAZ/1), said that his Government had carried out a number of important legal reforms in recent years that had demonstrated its commitment to democracy and human rights. It had mobilized considerable resources for efforts to combat violations of those rights, not least of all enforced disappearance and unlawful deprivation of liberty.

3. An independent and effective judiciary had been established in the country, and citizens' rights had been further protected with the introduction of jury trials and specialized courts. Stricter eligibility requirements for judicial appointments had been imposed and the selection process had been made more transparent. Judges were now chosen by the Higher Judicial Council, which was made up of members of the Parliament, experienced judges and political officials; and Supreme Court judges were appointed by the Senate, the upper house of the Parliament. On 1 January 2015, a new Criminal Code, Code of Criminal Procedure and Penal Enforcement Code had entered into force and other steps had been taken to ensure that citizens' rights and freedoms were fully safeguarded.

4. Greater judicial control over criminal proceedings had been established. All crimes reported to the law enforcement authorities, including reports of disappearances of persons, were promptly investigated, whereas, previously, a preliminary inquiry had been required before such investigations could be launched. The adversarial principle had been introduced in court hearings and reasonable doubt had been established as a standard of evidence. Furthermore, the role of lawyers had been enhanced and a wider range of people were now eligible for free legal assistance.

5. In accordance with the International Covenant on Civil and Political Rights and within the framework of the recently adopted reforms, most investigative action, including remand in custody, required authorization from the courts. As a result, the number of persons held in custody, in particular minors, had decreased dramatically; alternative preventive measures had been used instead, such as release on bail and house arrest.

6. The Government was implementing a programme to modernize the law enforcement system with a view to bringing it into line with the highest international standards. All reforms currently under way were aimed at getting the public to view law enforcement agencies as a social partner and as a service rather than as a criminal prosecution authority.

7. Alleged offenders could be detained by authorized officials for a period of up to 72 hours and only on grounds provided for by law; they must also be read their rights and obligations. Under the law, members of the family of the detainee must be informed of his or her detention. In cases of detention of foreign nationals, the relevant consulates were immediately notified. When persons were sentenced to prison, family members must be informed of the location of the place of detention. The failure or refusal to do so was subject to criminal penalties.

8. The Office of the Procurator General and the courts had responsibility for protecting the rights and freedoms of persons being held in detention. Special units were established in places of detention to conduct internal investigations of allegations of abuse by officials. Under the Law Enforcement Service Act, officials who were instructed to carry out an order that they knew to be unlawful were obliged to comply with the law and they were protected by the law. When officials committed gross violations of the Constitution, their

superior officer was subject to dismissal. The responsibilities of superior officers were in line with the relevant provisions of the International Convention for the Protection of All Persons from Enforced Disappearance.

9. The offences referred to in article 3 of the Convention were covered under article 125 (Abduction), article 126 (Unlawful deprivation of liberty) and article 128 (Human trafficking) of the Criminal Code. Under the Code, abduction was defined as deliberate wrongful acts aimed at seizing and removing persons from their social setting or place of residence and detaining them against their will at another location. Unlawful deprivation of liberty meant depriving persons of the opportunity to move about in unenclosed areas of their own free will, locking them indoors, tying them up or forcibly detaining them.

10. Every three years, the Government prepared, with input from international and non-governmental organizations, an action plan to combat human trafficking. A new plan had been drafted in 2015, which took full account of the recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences.

11. Measures had been stipulated by law for the rehabilitation of victims of enforced disappearance and for reparation for damages caused to them as a result of unlawful acts by officials. The details of such reparation were set out in the initial report and in the written replies to the list of issues (CED/C/KAZ/Q/1/Add.1).

12. Searches for disappeared persons were conducted by the internal affairs agencies in the manner prescribed by law, including searches involving assistance from the competent authorities of foreign States under international agreements and through the International Criminal Police Organization (INTERPOL).

13. Legislative measures had been adopted to prevent the unlawful committal of persons to psychiatric facilities. Under the law, a person could be forcibly institutionalized in such facilities only by a court decision. Thus, the fact that there were such standards in the domestic legislation ensured the principle of inevitability of punishment for anyone carrying out a crime related to enforced disappearance.

14. The Human Rights Commission, which was attached to the Office of the President, played an active role in protecting the constitutional rights of citizens. The post of Commissioner for Children's Rights had been established in February 2016 by presidential decree. In 2013, a national preventive mechanism had been set up for the prevention of torture. Both the Office of the Human Rights Commissioner and the national preventive mechanism enjoyed full independence from all branches of government, and wrongful interference in their activities was prohibited by law.

15. The Government was engaged in constructive dialogue with all human rights NGOs through the local boards that had been established within every law enforcement body. The boards had the right to make unimpeded visits to special facilities, conduct interviews with prisoners and receive appeals and complaints from prisoners concerning violations of their rights and legitimate interests. Crisis centres had been set up throughout the country to provide victims of human rights violations with free legal assistance and social, medical and psychological services.

16. Kazakhstan had embarked on a process intended to strengthen the rule of law and protect the rights and freedoms of all. The Government took into careful consideration all proposals from its international partners and was grateful for their views. It had set itself ambitious goals and had every confidence that it would achieve them.

17. **Mr. Hazan** (Country Rapporteur) said that he was pleased to see such a high-level delegation with so many specializations and he welcomed the reforms to the legal system that had just been described. Referring to paragraph 3 of the replies to the list of issues, he said that the delegation should be more specific about the reasons why the Government did

not recognize the Committee's competence to receive and consider communications. He wished to know whether the delegation could provide further statistical data on or examples of the sentences imposed for the offences mentioned in paragraph 19 of the replies. Reference had been made to some 3,000 persons who had gone missing for whom a search had been put out. The delegation should indicate whether a register of such persons was kept, even though there had been no suspicion of involvement by public officials in those cases. He would also appreciate further information on the resources made available to the Human Rights Commissioner to enable him to fulfil his mandate.

18. **Mr. Yukushiji** (Country Rapporteur) said that it would be helpful to have detailed information on the national laws that were aimed at preventing enforced disappearance in emergency situations. Referring to paragraph 15 of the written replies, he wondered whether the right not to be subjected to enforced disappearance under article 1 of the Convention was specifically recognized as a non-derogable right under national law and what specific non-derogable rights were covered in emergencies.

19. Turning to paragraph 19 of the replies, he asked whether there had been any cases in which the death penalty had been imposed. He also wished to know whether the death penalty had been abolished when the Criminal Code had been amended. The delegation should clarify why it considered that there was no need to make enforced disappearance a separate offence under national law, especially as the absence of such an offence made it difficult to collect data, or even general information, on enforced disappearance. He would be grateful if the delegation would also provide examples, if any, in which article 6 (1) (b) of the Convention had been applied to superior officers who had been aware of wrongdoing by their subordinates and had failed to take action. It was not clear whether the responsibility incurred by superiors for crimes committed by their subordinates entailed administrative or criminal responsibility under the Law Enforcement Service Act and whether the Act was applicable to the security and armed forces.

20. He asked whether crimes against humanity constituted an offence under the State party's criminal law and, if not, whether the State party intended to make them a specific offence in the near future. He wondered whether the new Criminal Code continued to penalize criminally punishable acts as had been described in paragraph 33 of the State party's initial report. Did the penalties provided for in the Criminal Code ensure that the State party fulfilled its obligation under article 7 (1) of the Convention to make the offence of enforced disappearance punishable by penalties that took into account its extreme seriousness?

21. He said that he would appreciate an explanation of the ambiguous provisions of the previous Criminal Code, under which the commission of an offence under physical or psychological duress, on account of dependency or while carrying out an order or instruction during a police inquiry was deemed a circumstance that mitigated criminal responsibility. He wondered whether those provisions had been carried over into the new Criminal Code. It would also be interesting to know how the State party applied the provision which suggested that illegal or amoral behaviour by a victim was a mitigating circumstance and whether an accused person's decision to help bring a disappeared person forward alive or otherwise clarify cases of enforced disappearance would be interpreted as a mitigating circumstance. Lastly, he asked whether military personnel and members of the security forces were covered by the provision stating that the commission of an offence by a law enforcement officer or judge in abuse of his or her authority was an aggravating circumstance.

22. **Mr. Hazan** said that he wished to know whether any offences were considered continuous offences under the State party's criminal laws. He wondered how the term of limitation was calculated for crimes involving deprivation of liberty for an ongoing period of time.

23. He wished to know whether military courts were ever prohibited from trying cases of serious human rights violations. He asked for clarification of paragraph 39 of the replies to the list of issues, which seemed to suggest that cases of enforced disappearance involving military personnel would be handled by military jurisdictions. Had the country's military courts ever tried cases involving abduction, unlawful deprivation of liberty or trafficking in persons?

24. He said that he would welcome more information about the units of the Ministry of Internal Affairs that had been set up to combat crimes associated with trafficking in persons. It would be interesting to know why those units had been set up in the two cities of Astana and Almaty and what specific cases they had been involved in. Information on any other investigative units, including forensic services, that could help the State party to fulfil its obligation to conduct a thorough and impartial investigation of allegations of enforced disappearance would be welcome, as would an explanation of the work of the special procurators referred to in paragraph 64 of the State party's initial report.

25. He asked how enforced disappearance, torture and other serious human rights violations were investigated, especially in view of the State party's assertion that there was no mechanism for relieving the security forces or law enforcement agencies of responsibility for the investigation when their members were accused of such crimes. He also asked whether allegations of torture and ill-treatment made against law enforcement officials were commonly dealt with administratively rather than by the criminal courts and, if so, whether the delegation could provide information on the outcome of those administrative proceedings.

26. It would be interesting to know whether Kazakhstan could refuse a request for the extradition of a person accused of enforced disappearance on the grounds that enforced disappearance was not an autonomous offence in Kazakh law. In the same connection, he asked how Kazakhstan reconciled its refusal to extradite its citizens to States with which it had not entered into an extradition treaty with its obligations under article 9 (1) (b) of the Convention, read in conjunction with article 7 (1). Conversely, he wished to know whether foreign nationals present in Kazakhstan but accused of committing an enforced disappearance in another State were subject to prosecution in the Kazakh courts. He also asked whether there was any legislation prohibiting the extradition of a person when there was reason to believe that the person would be subjected to ill-treatment or enforced disappearance. Did the legal cooperation agreements listed in the State party's initial report incorporate any of the provisions of articles 13 to 15 of the Convention?

27. **Ms. Janina** said that she wished to know what arguments had led the Kazakh authorities to their position that there was no need to take any measures to ensure that enforced disappearance constituted a separate offence under the State party's criminal law. She also wished to know whether laws addressing such offences as abduction were an adequate substitute. It would be interesting to know whether Kazakhstan had recognized the competence of other treaty bodies to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of provisions of the international human rights treaties to which it was a party.

The meeting was suspended at 3.50 p.m. and resumed at 4.20 p.m.

28. **Mr. Zhakupov** (Kazakhstan) said that his country had recognized the competence of a number of other treaty bodies to receive and consider communications from or on behalf of individuals. A proposal to make a declaration recognizing similar competence of the Committee on Enforced Disappearances was currently being considered. He was hopeful that a decision would be made shortly.

29. Article 400 of the new Criminal Code, which had entered into force in early 2015, addressed the arrest, detention, abduction or any other form of deprivation of liberty by

agents of the State or by persons or groups of persons acting in representation of the State. The provisions of article 2 of the Convention, as a whole, had thus been incorporated into the Criminal Code. Criminal penalties had also been established for the acts described in article 3 of the Convention. The Government was therefore of the view that enforced disappearance, as defined in the Convention, was criminalized in Kazakhstan.

30. **Mr. Abishev** (Kazakhstan) said that the Kazakh Human Rights Commission was a consultative body that included representatives of civil society. The Commissioner, also referred to as the Ombudsman, was fully independent. His office was entitled to request information from any public official, and in 2013 it had been made responsible for the national mechanism for the prevention of torture. The Ombudsman's reports were published, and the State was required to implement his recommendations. The status and activities of his office were guided largely by the Paris Principles, and although discussions on strengthening the status of the Ombudsman were still under way, his office worked effectively to defend the rights of all persons subject to Kazakh jurisdiction.

31. **Mr. Aripov** (Kazakhstan) said that in Kazakhstan the administration of justice was the responsibility of the courts alone and that they could not be relieved of that responsibility. The concept of military jurisdiction did not exist. Military courts were simply part of the country's judicial system.

32. In the new Criminal Code, a victim's illegal or amoral behaviour was still considered a circumstance that could potentially mitigate responsibility for a crime targeting the victim, whereas the abuse of authority by law enforcement officials in the commission of a crime was considered an aggravating circumstance. The President had recently announced a moratorium on the death penalty.

33. **Mr. Zhakupov** (Kazakhstan) said that although the commission of an offence under physical or psychological duress or on account of dependency mitigated criminal responsibility for that offence, the Law Enforcement Service Act stated that unlawful orders were not to be obeyed and that no law enforcement official would be held responsible for any failure to obey such an order.

34. **Mr. Dossanov** (Kazakhstan) said that basic procedural safeguards could be limited only in the event of threats to the country's existence or declared national emergencies. They could not be limited for political reasons, and in no case did such limitations provide for the possibility of enforced disappearance or unlawful deprivation of liberty.

35. The table in paragraph 22 of the initial report provided information on cases brought to court concerning abduction (art. 125 of the Criminal Code), unlawful deprivation of liberty (art. 126) and trafficking in persons (art. 128). No cases of enforced disappearance as defined in article 2 of the Convention had been identified.

36. Without a court order, an individual could be detained for no more than 72 hours, and all persons taken into custody were read their rights. The family of a detained minor was to be notified of the detention without delay.

37. Whenever a non-national was detained, the Ministry of Foreign Affairs was required to notify the relevant embassy or consulate, or another representative body of the State in question, within 24 hours.

38. Pursuant to various articles of the Criminal Code, superior officers could be held criminally liable for their own acts and for those of subordinates acting on their instructions. Specific situations covered by individual articles included abuse of authority, exceeding official powers, dereliction of duty, nonfeasance, concealing an offence, failure to report an offence and deliberate, unlawful detention or placement or maintenance of a person in custody. Article 28 of the Code defined the various participants in an offence — perpetrators, organizers, instigators and accessories — to whom criminal liability could be

attributed. The Law Enforcement Service Act expressly stipulated that officials were obliged to comply with the law and benefited from its protection should they receive an unlawful order or instruction. By the same token, officials who executed orders that ran counter to the law and caused harm or injury to others were criminally liable for their actions. The law also provided for the temporary suspension and dismissal of officers implicated in violations of constitutional rights.

39. The circumstances in which judges or prosecutors might decide to dismiss legal proceedings and release a person from criminal liability were defined in the Code of Criminal Procedure. The statute of limitation applicable to cases of enforced disappearance was in line with the relevant provisions of the Criminal Code. The limitation period began on the date on which the criminal activity commenced, was suspended if the person was released by the court and did not apply to especially serious offences, such as acts of terrorism, extremism and other crimes against peace, safety, constitutional order and State security.

40. Whenever an unidentified body was found, the case was referred to the investigating authorities for expert forensic analysis. If the first analysis was inconclusive, a second analysis was performed under the supervision of the Ministry of Justice.

41. **Ms. Aisina** (Kazakhstan) said that the role of special procurators was defined in the Code of Criminal Procedure and entailed the oversight of pretrial investigative proceedings and all stages of trial proceedings. Special procurators were independent and subject only to the law. Offences referred to a special procurator were typically crimes committed by law enforcement agents, such as torture, in respect of which a lack of objectivity might otherwise impede due process of law. In 2015, more than 130 cases, many of which had involved law enforcement agents, had been overseen by special procurators. A total of 15 law enforcement agents had been convicted in those cases.

42. As from the date of ratification, the Government of Kazakhstan had committed to respecting all provisions of the Convention, including those of article 16, which protected persons against extradition to another State when there were grounds to believe they might be subjected to enforced disappearance if returned. Extradition was not authorized in such circumstances, pursuant to the relevant articles of the Criminal Code. Extradition was expressly prohibited in cases where a person's life or freedom was threatened due to his or her religion, nationality, ethnic origin or membership of a particular social group and where extradition was prohibited under international treaties ratified by Kazakhstan, which took precedence over national law.

43. The criteria used to assess the risk that a person might face if extradited were detailed in the new criminal legislation. A number of additional conditions and checks had been introduced in order to ensure that all requests were given careful, in-depth consideration and that rights were not violated. In application of the new provisions, the authorities were given a maximum of 12 months to examine and verify the supporting materials submitted by the requesting State, the related immigration policies and the statements of the person whose extradition had been requested. The requested person could be detained for no longer than that 12-month period. If the person was ultimately denied refugee status or asylum, the decision could be appealed before the Supreme Court.

44. Diplomatic assurances were not accepted without verification. The Government also examined alternative sources, including any recommendations issued to the State in question by United Nations treaty bodies and any relevant reports issued by United Nations special rapporteurs. If there was any reason to believe that the person requested could face torture or enforced disappearance if returned, the extradition request was not granted even if assurances had been given. In a recent case, the Procurator General's Office had refused to surrender an Uzbek citizen who had taken part in an uprising on the grounds that the

person could be subjected to torture and possibly enforced disappearance if returned to Uzbekistan. The person in question had subsequently been released.

45. **Mr. Kakhanov** (Kazakhstan) said that incidents of unlawful deprivation of liberty linked to trafficking in human beings were investigated by dedicated units of the criminal police established in various regions and cities. Since the ratification of the Convention, just over 400 people had been found guilty of abduction. A somewhat smaller number had been convicted of human trafficking.

46. **Mr. Kayrnekov** (Kazakhstan) said that, in accordance with national law, all complaints of torture or ill-treatment at the hands of State officials were referred to a special procurator in order to ensure a full and impartial investigation. However, there had been no such investigations in the past few years.

47. **Mr. Zhakupov** (Kazakhstan) said that criminal offences were classified according to their severity in a specific article of the Criminal Code that also established maximum sentences for offences in each category, based on the threat they posed for society. Accessories to offences in each category were subject to the same penalties as the perpetrators. In line with the requirements of the Convention, offences of enforced disappearance were not regarded as political or politically motivated offences. Accordingly, such arguments could not be invoked as grounds to expedite an extradition request.

48. **Mr. Yakushiji** asked whether all four criteria established in article 414 of the Criminal Code must be met in order for an offence of enforced disappearance to be deemed to have been committed. He was particularly interested to know whether the acts concerned must in all cases result in "serious consequences", as stated in the third subparagraph of that article, and what criteria were used to determine the existence of "serious consequences".

49. Acting upon the orders of a superior officer should not, in his opinion, be accepted as a mitigating circumstance for a criminal offence and he would appreciate the delegation's confirmation that the State party adhered to that interpretation. He would likewise appreciate confirmation that the death penalty was not applicable to offences of enforced disappearance. Since the State party had indicated that double criminality was a prerequisite for extradition, an explanation as to how the authorities applied that principle when enforced disappearance had not been criminalized as a separate, autonomous offence would also be welcome.

50. Noting that the State party had also indicated that international treaties were directly applicable except in cases where the promulgation of a new law was necessary to allow their application, he asked which State body decided whether a new law was necessary and on what basis such decisions were made. Confirmation as to the direct applicability of the Convention and its status in domestic law would be useful in that connection.

51. **Mr. Hazan** said that, according to reports received by the Committee, members of the security forces appeared to be involved in trafficking in human beings. He therefore wondered whether trafficking might at times meet the criteria for enforced disappearance under the Convention. Referring to article 8 of the Criminal Code, whereby Kazakh citizens who committed an offence in the territory of another State were not liable to extradition to that State unless otherwise stipulated in an international treaty, he asked whether the Convention was regarded as one of the international treaties that allowed extradition under those circumstances.

52. He would like to know whether the delegation believed that it was possible to guarantee that penalties could be commensurate with the gravity of the crime if the various elements of enforced disappearance were criminalized individually under several legislative provisions rather than in a single definition of the crime as an autonomous offence. Further,

he wondered whether it was possible under such circumstances to develop and apply appropriate prevention policies in accordance with the Convention.

53. On the question of mitigating circumstances, it would appear that for a public official such as a prison or police officer to claim that he or she was merely performing assigned duties would conflict with the prohibition on performing such actions where they contravened the law. He wondered how that conflict was resolved.

54. He would like to know whether the DNA banks included samples from families to assist in identification of victims.

55. Lastly, he asked whether persons subject to extradition proceedings had the opportunity to be heard and any means of having the proceedings suspended. If they had no lawyer, was a public defender assigned to their case?

56. **Mr. López Ortega** suggested that the State party should reconsider its position on the definition of enforced disappearance as an autonomous crime. One important consequence of doing so would be that anyone concealing or abetting enforced disappearance would automatically become a perpetrator, rather than merely an accomplice to one of the individually defined elements of the crime. That person would then be subject to a penalty commensurate with the seriousness of the crime rather than the lesser penalty that would apply to an accomplice.

57. **Mr. Huhle** said that the United States Department of State Trafficking in Persons Report 2015 described trafficking as a major problem in Kazakhstan, with police officers having been convicted of involvement. In itself the fact of such convictions was welcome, but they could be the tip of an iceberg. He would appreciate the statistics on the cases that had been brought to the attention of the authorities. How many had been resolved? How many could be considered cases of enforced disappearance?

58. **Mr. Figallo Rivadeneyra** asked whether the Procurator General's decision on extradition could be appealed by either party; in other words, was it appealable whether it granted or denied extradition? Further, once the Supreme Court had given a ruling, was there any simple and effective means of challenging the decision if the person considered that extradition would result in a violation of his or her human rights?

59. **Mr. Aripov** (Kazakhstan), referring to the application of international treaties in Kazakhstan, said that in 2008 the Supreme Court had issued an order stating that the courts were to be guided by the norms of international law where pertinent. Accordingly, the courts took account of international treaties that had been ratified by Kazakhstan. No specific account had been taken of the Convention.

60. **Ms. Aisina** (Kazakhstan) said that the Convention had not been applied because there had been no convictions for a case of enforced disappearance. There were precedents for the application of other international treaties, such as the International Covenant on Civil and Political Rights; one regional court, in awarding damages for torture, had made explicit reference to a decision by a United Nations treaty body.

61. Extradition was determined on the basis either of a bilateral agreement or, where there was none, of international treaties, including the Convention. As to the extradition of Kazakh citizens, the principle of unavoidability of punishment was applied. There was a procedure for investigating anyone suspected of carrying out enforced disappearance in another State and for bringing the case to court. There had as yet been no cases where Kazakhstan had refused to investigate a request from another State.

62. Protection for those subject to extradition proceedings was governed by the Code of Criminal Procedure, which protected the right to meet confidentially with a lawyer, to have a lawyer present during questioning, to receive family visits at the place of detention, to

challenge the decision on deprivation of liberty, to be heard in court and to appeal any decision within 24 hours. Foreign nationals had the right to meet with their consular officials. Those rights were explained in writing at the time of detention and the subject was required to sign as confirmation that they had been so explained.

63. **Mr. Abishev** (Kazakhstan) said that there were some 300 to 350 cases per year of trafficking in persons. In dealing with the problem, Kazakhstan observed its human rights obligations under international law, notably the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and applied the principles of prevention, provision of assistance to victims, prosecution of perpetrators and partnership with civil society and NGOs. The previous year, the Human Rights Commission had worked with the government departments concerned and the International Office for Migration to produce a handbook on the issue; the recommendations made, notably in respect of assistance to victims, were now being implemented.

64. **Mr. Kakhanov** (Kazakhstan), responding to the request for statistics on human trafficking, said that there had been 79 cases of abduction in 2015, of which 33 had gone to court, 2 had been discontinued for various reasons and the remainder were ongoing; 270 cases of unlawful deprivation of liberty had been identified, of which 79 had gone to court, 89 had been discontinued and the remainder were ongoing; and 42 cases of trafficking in persons had been identified, of which 9 had gone to court, 4 had been discontinued and the remainder were ongoing. In no case had law enforcement officials been involved.

65. **Mr. Zhakupov** (Kazakhstan) said that following orders was not a mitigating circumstance. Both the person issuing an unlawful order and anyone following that order were liable to prosecution. Aggravating circumstances were listed in article 54 of the Criminal Code and applied to all crimes defined in the Code.

66. In the matter of extradition, Kazakhstan recognized all international treaties without exception and, in accordance with article 16 of the Convention, if there were grounds for believing that a person risked enforced disappearance, the State reserved the right not to extradite. Kazakhstan therefore fulfilled its international obligations in its extradition procedures.

67. The offence of trafficking in persons might include other offences such as unlawful deprivation of liberty and abduction. Anyone held on a charge of trafficking could be charged with other separately defined offences. All admissions to places of deprivation of liberty were systematically registered and it was not possible for an individual simply to disappear from view. Any official who failed to observe the custody procedures would be prosecuted under the law.

68. The DNA bank was still being set up. Identification by genetic code was currently done by experts in special institutions. Ministry of Justice experts could also use the database in the identification of missing persons.

69. **Mr. Abishev** (Kazakhstan) said that the International Criminal Court was recognized as a highly authoritative body but as yet it took rather a long time to deal with cases. Kazakhstan needed time to assess the Court's effectiveness and the decisions it took. There would be no consideration of ratifying the Rome Statute until that assessment had been carried out.

The meeting rose at 5.55 p.m.

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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Tenth session

Summary record of the 163rd meeting
Held at the Palais des Nations, Geneva, on Thursday, 10 March 2016, at 10 a.m.

Chair: Mr. Decaux

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Kazakhstan (continued) (CED/C/KAZ/1; CED/C/KAZ/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Kazakhstan took places at the Committee table.*

2. **The Chair** invited the country rapporteurs to discuss sections 4 and 5 of the written replies to the list of issues (CED/C/KAZ/Q/1/Add.1).

3. **Mr. Hazan** (Country Rapporteur), noting that the replies to the list of issues indicated that, in the absence of an international treaty, the execution of requests for judicial assistance must be refused if they related to actions that were not criminal offences in Kazakhstan, asked whether the Government would reject such a request if it related to an offence qualified as an enforced disappearance, as such an offence did not exist in the national law. In the list of issues (CED/C/KAZ/Q/1), the Committee had asked whether the State party planned to incorporate an explicit prohibition against the expulsion, return, surrender or extradition of persons who would be at risk of being subjected to enforced disappearance. The Committee had received reports that persons lacking visas or valid documentation were prevented from entering the country at the border and were thus unable to request asylum, notwithstanding the legal provisions that would allow such applications. It had also been reported that the State party, in dealing with such cases, regularly accepted assurances from other States that persons thus forced to leave Kazakhstan would not be subjected to torture or degrading treatment. What legislative or administrative measures had been taken to ensure compliance with article 16 of the Convention, which guaranteed protection for persons in danger of being subjected to enforced disappearance? Did such provisions cover deportation as well as extradition? Did the Government plan to incorporate into the law a specific definition of return, surrender or extradition so as to protect such persons?

4. As the replies to the list of issues referred to the immediate notification of family members when a person was arrested, the delegation should explain the meaning of the word "immediate" and explain how such notification took place in practice. The arrest of a foreign national or stateless person was supposed to be notified to the respective diplomatic or consular office within 24 hours. Was that time limit respected in practice? According to some reports, detained persons were not afforded prompt access to counsel or the opportunity to contact their families.

5. The delegation should explain what persons were held in National Security Committee facilities and military detention barracks and units, and in what conditions. The Committee against Torture had noted that restrictions were imposed on civil society organizations wishing to visit prisons in the context of the national preventive mechanism and that access to some facilities, such as psychiatric institutions and children's homes, was not guaranteed. The replies to the list of issues mentioned the possibility of the legislature adopting a law granting the national preventive mechanism broader access to places of detention. He invited the delegation to describe the bill's provisions and the progress made towards adopting it. He had received reports that the national preventive mechanism had encountered bureaucratic obstacles that prevented urgent or unannounced visits from being conducted. The Committee against Torture and the Human Rights Committee had both referred to lapses and delays in the registration of persons being held in detention, which could point to torture or enforced disappearance. Did all detention facilities keep registers containing all the information required by the Convention under article 17 (3)? According to the State party, detained persons could be held up to 72 hours without a court order.

During that period, who authorized the detention and what safeguards were in place following arrest? The provisions of the Code of Criminal Procedure cited by the State party as guaranteeing the right of habeas corpus were apparently insufficient and not in compliance with the Convention. Did any other provisions ensure specific institutional and legal recourse for the prevention of enforced disappearance?

6. The delegation should explain in more detail the cases in which defendants could or could not renounce their right to counsel and whether there were mechanisms for the automatic appointment of defence lawyers. The Code of Criminal Procedure apparently established that defence counsel could take part in proceedings only upon the request of the accused. Was that provision still in force? In practice, what was the proportion of defendants who had defence lawyers? Lastly, the Government had reported that of the 114 pretrial investigations conducted into deliberate unlawful detention or placement or maintenance of a person in custody in the first nine months of 2015, just 2 had been sent to court; 83 cases had been discontinued and in 17 cases the term for investigation had expired. Why had so few cases gone to court? Was the current framework sufficiently effective at fighting impunity?

7. **Mr. Yakushiji** (Country Rapporteur) asked whether any specific training programmes addressed the Convention and the dialogue with the Committee, and what kind of training programmes were organized for members of the military, police and security forces. How was compensation or reparation provided for the relatives of victims of enforced disappearance or other persons who suffered harm as a result of an enforced disappearance if the fate of the disappeared person remained unclarified? Were family members included in the concept of "injured party"? The State party had indicated that reparation for unlawful arrest, detention or other procedural coercive measures was funded from the State budget. Did that include rehabilitation and reparation for an enforced disappearance perpetrated by non-State actors but with the acquiescence of State agents? The delegation should explain whether victims had to initiate proceedings in order to obtain compensation and whether they had to be officially recognized as injured parties in a criminal procedure in order to obtain compensation or reparation. The Committee would also like to learn how domestic law ensured the right to obtain reparation, including reparation other than compensation for material injury and related costs.

8. He asked about the status of the legislative bill that would establish a victims' compensation fund. Were there any plans to introduce a definition of victim in line with the definition contained in the Convention? What was the legal status of persons who had disappeared and whose fate had still not been clarified? What rights did their relatives have in relation to social welfare benefits, financial matters, family law and property rights? The delegation should describe the criminal law legislation protecting children against wrongful removal and other consequences in cases where the parents were victims of enforced disappearance. Did Kazakh courts have the power to review any adoption or placement of children and to annul such action when they ascertained that it had originated in a case of enforced disappearance?

9. **Mr. Figallo Rivadeneyra** said that the Committee had received information according to which certain persons requesting asylum or subject to extradition had been returned to their country of origin without benefiting from the right to appeal against such measures on the grounds of non-refoulement. The State party apparently considered that such cases could be governed by bilateral treaties or on the basis of reciprocity. A specific and blanket guarantee against non-refoulement was required, allowing no exceptions. He also asked what measures were taken to ensure protection against torture, ill-treatment or disappearance in the event of expulsion of a person to a third country, for example if protection could not be ensured in the person's country of origin.

The meeting was suspended at 10.25 a.m. and resumed at 10.55 a.m.

10. **Ms. Aisina** (Kazakhstan) said that, pursuant to the revisions to the Criminal Code and the Code of Criminal Procedure, the way in which extradition was handled had been updated. Previously, Kazakhstan had carried out extraditions only when an international treaty specifically addressed the question, but since November 2015 it was also possible to do so on the basis of reciprocity, provided that the requesting State had ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Persons suspected of crimes related to enforced disappearance could thus be extradited to States parties to the Convention. The legislature had established additional grounds for denying extradition requests. If there was reason to believe that the requesting State would carry out torture or that the individual's life, health or freedom would be threatened, the Procurator General would deny the request. Extradition would similarly be denied in cases where it would violate an obligation of Kazakhstan under international treaties, including the Convention.

11. Deportation cases were decided in court. If the person in question or counsel claimed that there was a threat of enforced disappearance, a special administrative court had the power to cancel the deportation. In such cases, deportation could be replaced with an alternative penalty such as a fine. The Code of Administrative Offences specifically stated that ratified treaties took precedence over the provisions of the Code; the provisions of ratified treaties were in general considered to take precedence over national law. A presidential decree issued in 2013 had established the framework for the granting of political asylum to foreign nationals and stateless persons and their families; such persons were given refugee status if they faced persecution or a real threat thereof for their political activity or on the grounds of their race, ethnicity or religion, or if they were victims of human rights violations covered by an international treaty. In practice, the applicant submitted his or her case before a committee of the Ministry of Foreign Affairs, which forwarded the file to the Office of the President for a decision on the granting of political asylum. Persons being persecuted in another country for actions that were offences under Kazakh law or that ran counter to the principles and aims of the United Nations were not eligible for asylum. Kazakhstan took all possible steps to comply with the recommendations of United Nations bodies. In a recent case, the Human Rights Committee had found that Kazakhstan had violated the rights of Timur Ilyasov, a foreign national who resided in Kazakhstan and had been suspected of terrorism and extremist acts in the Russian Federation, by denying him re-entry into Kazakhstan. Notwithstanding the potential danger that Mr. Ilyasov represented for national security, the State party had complied with the recommendations issued by the treaty body on the grounds of family reunification.

12. **Ms. Ospanova** (Kazakhstan) said that all the measures taken by Kazakhstan in the context of recent reforms were aimed at creating an atmosphere of zero tolerance for torture. The establishment of the national preventive mechanism in 2013 had been an important achievement in that direction. Through the mechanism, visits were currently being conducted to all the places of deprivation of liberty mentioned in paragraph 97 of the replies to the list of issues. The persons held at facilities of the National Security Committee were persons accused or suspected of offences against the interests of the State or State security; those held at military barracks were servicemen who were subject to disciplinary or administrative penalties.

13. In 2014 and 2015, members of the national preventive mechanism had respectively visited 25 and 33 psychiatric institutions. The mechanism had faced no obstacles to access at such establishments. The mechanism carried out three kinds of visits (periodical, intermediary and special) and all visits were unannounced. The special visits were conducted, on an urgent basis, in response to reports of torture and were coordinated with the Human Rights Commissioner. Both by law and in practice, no time constraints were

imposed on such visits: they could take place at any time of the day or night, on any day of the week and on holidays.

14. Pursuant to the recommendations issued by the Committee against Torture, the mandate of the mechanism had been extended to allow it to conduct visits to police stations. In 2015, 30 such visits had been conducted. The Parliament was currently considering the addition of new categories to the list of institutions and facilities that could be visited, for example children's homes and social welfare institutions. The mechanism had been quite effective. The number of reports of violent treatment of inmates registered during the mechanism's regular visits had dropped to zero. In 2015, special visits had been conducted in response to reports of ill-treatment or the use of force; after two such visits, the case files had been transferred to the procurator's office for prosecution. However, it should be borne in mind that the mechanism was fundamentally preventive, not investigative, in nature.

15. **Mr. Bazylbekov** (Kazakhstan) said that, under national law, all persons deprived of their liberty were entitled to inform their relatives of their detention and whereabouts. As soon as a person was taken into custody, the procurator's office and judge were informed. The official carrying out the initial investigation was required by law to notify the person's family of the detention and the person's whereabouts or to give the person the opportunity to do so. When a foreign national was taken into custody, the diplomatic or consular officials representing that person's interests were notified immediately or, in extreme cases, within 24 hours. In cases where a person was sentenced to serve time in prison, the prison administration was required, under the Code of Criminal Procedure, to report the transfer and whereabouts to the person's family immediately upon the order of the transfer and again within two days following the transfer. The intentional failure to inform family members, refusal to provide such information to persons entitled to receive it and falsification of such information were all criminal offences. The Penal Enforcement Code established that persons deprived of their liberty were entitled to maintain contact with their spouses and other relatives and had the right to receive visits. Convicted prisoners were also entitled, upon oral or written request, to meet with their lawyers with no limitation on the duration of the interviews and full respect for confidentiality. The rights and obligations of foreign nationals and stateless persons were the same as those of Kazakh citizens, unless otherwise stipulated in the Constitution or the law; in addition, they had the right to contact their consular and diplomatic officials or, in the absence of such representation, the international organizations that represented their interests.

16. Special places of detention observed the same principles as other places of deprivation of liberty, in particular the principles of legality, the presumption of innocence, equality before the law, respect for the honour and dignity of the individual and standards of international human rights law. Suspects and accused persons had the right to unlimited and confidential consultation with their counsel and, in the case of foreign nationals or stateless persons, the right to receive visits from diplomatic and consular staff if authorized by the procurator's office. No complaints of infringements of those rights had been received.

17. Suspects and accused persons were registered in a database immediately upon admission to any facility operated by the Ministry of Internal Affairs. Prisons maintained general registers containing such data as the prisoner's full name, date of arrival, name of any previous detention facility, place of birth, identification number and sentencing information. Additional information was kept in personal data files for each inmate. No complaints had been received of improper registration.

18. That electronic database was integrated with the databases of other State services, such as those kept by the Office of the Procurator General, the State Statistics Committee and the health and social development agencies. The integration of such information

sources served as a guarantee of accuracy and ensured that no one would be left unaccounted for by the system.

19. The Human Rights Commissioner and the members of the national preventive mechanism had free and unrestricted access to all places of deprivation of liberty. In addition, the Ministry of Internal Affairs and other authorities had concluded memorandums of understanding with dozens of civil society organizations to allow visits to be made by the latter. In 2015 and 2016, over 88 visits had taken place. NGOs worked side by side with governmental agencies in the training of prison staff. Over 5,200 legal literacy training sessions had been held for prison staff. In 2015, five seminars and some 200 upgrading courses had been held on topics such as legal literacy and human rights.

20. The mandate of the public monitoring commissions, which had been established in 2004 as an oversight mechanism for the Ministry of Internal Affairs, had been extended to include special temporary detention facilities. For purposes of comparison, the national preventive mechanism had carried out 132 visits to Ministry facilities in 2014 and over 300 in 2015; the public monitoring commissions had conducted 271 visits in 2015, including 30 to special temporary detention facilities.

21. **Mr. Abishev** (Kazakhstan) said that the Constitution provided everyone with the right to information, with the exception of information that was considered to be a State secret. All persons held in custody, as well as their family members and lawyers, thus had the right to freely receive any information relating to their cases. The Constitution also set out that all State bodies, including law enforcement agencies, courts and procurator's offices, were required to provide information on specific individuals if the request came from a lawyer, a duly appointed representative or the person's relatives. The Code of Criminal Procedure, the Criminal Code and the Civil Code all established the right for such persons to receive information on persons who had disappeared. Under the Lawyers Act, lawyers were entitled to have access to any information held by the judiciary or law enforcement agencies concerning the persons that they represented. By law, all requests for information must be responded to within a reasonable time. If the information was readily available, for instance in a database, it was often presented within an hour. The failure of an official to provide such information in a timely manner could lead to criminal and administrative charges.

22. In the case of a disappearance, the property rights of the victim and the victim's family were protected. Generally, an injured party filed a statement with a court noting that the person's whereabouts were unknown, after which the court could recognize the person as missing and order that the person's property, including real property, should pass on to the missing person's heirs. In such cases, the property was protected by the law and was not subject to taxation.

23. The procedure for ratifying an international agreement involved the Government sending a bill drafted by an interministerial team to the Parliament, where both chambers discussed the treaty in question. Once the Parliament approved ratification, the text was sent to the President, for signature, and at the same time to the Constitutional Council, which compared the new treaty's provisions with those of other treaties and domestic legislation with a view to ensuring harmonization. In practice, the provisions of international treaties were directly applicable in Kazakhstan and had the same rank as constitutional provisions.

24. **Mr. Dossanov** (Kazakhstan) said that, under the Code of Criminal Procedure, a person arrested by officers of the Ministry of Internal Affairs must be officially placed in detention or released within three hours. If the person was placed in detention, the official responsible for the pretrial investigation must clearly explain to the detainee his or her rights and provide the person with access to a lawyer within 24 hours. The Code also

established that the detainee must be allowed to contact a lawyer or, if unable to do so, must be offered the services of a lawyer by the body investigating the case. By law, assistance from a lawyer was mandatory in 11 specific cases, including those involving minors, mentally ill persons or persons who did not speak the language of the proceedings. If the detainee was unable to pay for a lawyer, the fees were paid from the State budget.

25. The Code of Criminal Procedure included a provision that mandated the immediate release of any person whose rights were violated during the first 72 hours of detention. In the absence of any grounds for keeping the person in custody, the release could be ordered by either the investigating official or the Office of the Procurator General.

26. Any lawyer participating in a pretrial investigation had full access to all documentation, including any secret documents, required for the defence of the accused.

27. The articles of the Code of Criminal Procedure that set out the concept of "injured party" included the family and relatives of disappeared persons, as they sustained both moral and material damages. If the perpetrator of the crime was identified in the pretrial investigation or during the trial, then material compensation was awarded in accordance with the law. If those responsible for the damage were acting in the service of the State, the reparation was paid from the State budget. The Government was currently drafting a bill that would establish a victims' compensation fund to cover such cases.

28. The fact that a relatively high number of missing person cases had been closed could be explained by the procedure used to register missing persons reports, which was to include such reports in a pretrial register within 24 hours of their submission and initiate an investigation. Given that the vast majority of persons who were reported missing eventually returned home, their cases were then closed. If there was reason to believe that an enforced disappearance had been committed, steps were taken to ascertain whether the missing person had been a victim of enforced disappearance or had left home of his or her own accord. That approach had yielded positive results owing to the fact that prompt action was taken in all cases.

29. **Mr. Zhakupov** (Kazakhstan) said that the Criminal Code defined the concept of "injured party" as any person who had suffered direct moral, physical or material harm. That definition included persons who had been subjected to enforced disappearance and their relatives or persons close to them. Since the definition of "injured party" covered all persons who had suffered harm as a result of a criminal offence, it was not necessary to include in the Criminal Code a specific definition of a victim of enforced disappearance.

30. No limitations were placed on the access of private defence counsel, human rights defenders or relatives acting as defenders to detained suspects for the purpose of providing legal assistance. Lawyers participating in criminal cases involving State interests were given access to State secrets so as to enable them to carry out their work in defending suspects. Regular, mandatory in-service training was provided to law enforcement officers and Ministry of Internal Affairs staff every three years, and included methods of dealing with cases of disappearance and other offences covered by the Convention.

31. A wide range of measures was available to ensure the rights of all children in Kazakhstan, including their protection from enforced disappearance. Such measures were carried out by several dedicated governmental agencies and were provided for in an ample legal framework, which included the Marriage and Family Code. Among other international instruments, Kazakhstan had acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution. The Criminal Code prescribed penalties for child abuse, unlawful removal of a minor abroad, child abduction, unlawfully depriving a child of liberty and child trafficking. There were strict regulations in force for adoption, and violations were characterized as criminal

offences. The national legal framework was thus adequate to protect children in Kazakhstan from the offence of enforced disappearance.

32. Immediate action was taken on any report filed with the police about a missing child: a pretrial investigation was opened and a search to ascertain the child's whereabouts was initiated. Proof that the child had disappeared in the context of a criminal offence was not required in order to open an investigation. Such prompt action helped to guarantee that, in the case of the suspected enforced disappearance of a child, no time would be lost in efforts to bring those responsible to justice.

33. The reason behind the closing of so many investigations into alleged offences by State officials lay in the procedure used for registering them. The procedure allowed for pretrial investigations to be initiated whenever a person believed that he or she was being detained unlawfully, regardless of the circumstances. Thus, a large number of cases were opened, notwithstanding the fact that the prospects for a positive finding were generally slim. All testimony was recorded and an investigation was initiated even if a suspect had been detained only for a few hours, irrespective of whether or not the case could continue. Special procurators were assigned to such cases, and they in turn were monitored by higher-level procurator's offices, thus ensuring impartiality.

34. **Mr. Aripov** (Kazakhstan) said that the Supreme Court had established a council to coordinate all initial and refresher training for judges, which included courses in the application of international law. Such training was imparted by means of regular seminars and round tables, academic conferences and other types of practical exercises. Audio and video links were used to offer training courses to participants unable to attend in person. Moreover, all judges were required to keep abreast of legal practice, including case law at all levels of jurisdiction, which was accessible through a database. Regular evaluations had been conducted of the competence and performance of sitting judges since 2006.

35. **Mr. Abishev** (Kazakhstan), responding to the question whether a victim had to be officially recognized as such in order to be entitled to receive compensation, said that victims in criminal cases were entitled to receive full support and, in particular, social services. For cases where no criminal proceedings were initiated, the victims had the right to compensation from the State in accordance with one of the laws covering the cases in question. The Ministries of Internal Affairs, Labour and Social Protection, and Education and Science had drawn up the criteria for assessing whether or not a person had been subjected to violence, for example as victims of torture, ill-treatment, human trafficking or domestic abuse. There were plans to identify common criteria for providing support to human trafficking victims so that persons recognized as victims prior to court proceedings could have the same access to compensation from the State and to the same range of services as other victims.

36. **Ms. Tulegaliyeva** (Kazakhstan) said that, under recently adopted legislation, special social services and support financed from the State budget were available to all victims who met the prescribed criteria, including victims of violence and human trafficking. The services were provided by local public welfare institutions and NGOs. In 2015, more than 80 NGOs had worked actively to provide such State-funded social services. They identified recipients, accompanied them through the social rehabilitation process, ensured their safety while they were receiving services and maintained their confidentiality. Victims of human trafficking were entitled to a broad array of benefits, including medical, psychological, legal, employment and administrative assistance.

37. **Mr. Hazan** asked whether the State had envisaged eliminating or, at least, limiting the practice described in paragraph 85 of the replies to the list of issues of sending convicted prisoners to serve their sentences at prisons located far from their place of residence. That practice increased prisoners' risk of being subjected to enforced

disappearance and other human rights violations. He would like to know what practical results had been achieved through the reform of the criminal legislation in 2015.

38. In view of the statement in paragraph 150 of the State party's replies that children were eligible for adoption when a sole parent or both parents were missing, he asked whether such children could be placed in the care of relatives or persons close to their parents before being put up for adoption; what safeguards were taken to confirm that their parents were indeed missing; and how long after their parents went missing were children put up for adoption. In cases where the identity of the child's parent or parents was unknown, he wished to know what steps were taken to endeavour to identify the parents before the child was put up for adoption. He invited the delegation to indicate whether it considered the national legislation in that area to be in conformity with the requirements of article 25 of the Convention. He requested clarification of the circumstances in which a court could deprive parents of their parental rights, following which their child could be put up for adoption without their consent.

39. He wished to know whether, in the opinion of the delegation, the penalties prescribed in article 414 of the Kazakh Criminal Code for wilful failure to inform a suspect's relatives of his or her detention and whereabouts were appropriate in the light of the extreme seriousness of the offence of enforced disappearance. He asked what alternatives were available to judges when a security force was excluded from an investigation into an alleged enforced disappearance because one of its members was implicated in the alleged offence and which law provided the basis for such exclusion. He would appreciate an account of how impartiality was ensured from the outset in investigations of human rights violations, particularly in alleged cases of enforced disappearance or torture, as well as in administrative investigations carried out by the Ministry of Internal Affairs. In relation to the asylum case considered and granted by the Human Rights Commissioner, he wished to know what steps were envisaged in order to institutionalize that practice so that it would become a standard policy. Given that it was not compulsory in all cases for accused persons to have access to a lawyer during criminal proceedings, he wished to know what percentage of accused persons did not have access to a lawyer during criminal proceedings.

40. **Mr. Yakushiji** said that he had still not received a reply to his earlier questions concerning training programmes for members of the military, police and security forces and whether victims had to initiate proceedings in order to obtain compensation. He asked whether compensation could be provided under administrative or civil proceedings.

41. **Ms. Makenova** (Kazakhstan) said that measures to protect children from enforced disappearance included the establishment of the Committee for the Protection of Children's Rights, which had been in operation for more than 10 years, and the adoption of the Marriage and Family Code. Moreover, Kazakhstan had signed the Convention on the Rights of the Child, the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and other international instruments intended to protect children's rights and had brought its legislation almost completely into conformity with the international standards they contained.

42. A number of changes had been made to the national adoption process in the past 10 years, and the Marriage and Family Code contained a special section on children's rights. Residents of Kazakhstan were given priority in adoption proceedings. More than 80 per cent of all children who did not live with their parents had been placed in the care of relatives.

43. When the identity of a child's parents was unknown, the child was placed in a State institution or with relatives while law enforcement agencies employed all available means to identify the parents. The Marriage and Family Code prescribed the grounds and

procedure to be used for terminating parental rights, which could be executed only by judicial decision and only as a last resort when the life or the welfare of the child was threatened. In cases where parental rights were terminated, an attempt was made to restore them by working with the parents. The Code provided for the annulment by a judicial authority of any adoption that was identified as having originated in an enforced disappearance.

44. In 2013, Kazakhstan had signed and ratified the Convention on the Civil Aspects of International Child Abduction and in 2014 it had entrusted its Committee for the Protection of Children's Rights with the task of ensuring the implementation of that instrument. In the preceding three years, there had been 20 reports of child abduction, and full investigations had been carried out in each case.

45. **Mr. Bazylbekov** (Kazakhstan) said that, under the Code of Criminal Procedure, convicted persons could be sent to a prison in another region only if their place of residence had no suitable prison facilities or did not offer the appropriate prison regime. For example, there was only one maximum security prison in the country, so convicts whose sentences were to be served in such facilities obviously had no other choice but to be sent to that location. Pursuant to the reform of the country's criminal legislation and the presidential decree on modernization of the prisons system, many changes were taking place, such as the introduction of mixed security facilities, which allowed prisoners who were subject to different security regimes to be placed in the same prison complex.

46. **Mr. Zhakupov** (Kazakhstan) said that, in order to ensure the impartiality of criminal investigations, the agency or unit in which a suspect was employed could not take part in an investigation of that person. Special procurators from the Office of the Procurator General carried out investigations of offences allegedly committed by members of law enforcement agencies. The police or the Ministry of Internal Affairs normally conducted pretrial investigations; however, when necessary to ensure impartiality, there were a number of other agencies that could handle investigations, such as the Economic Crimes and Corruption Agency and the National Security Committee.

47. The criminal penalties prescribed in article 414 of the Criminal Code were consistent with the requirement that they should be appropriate and take into account the seriousness of the offences. They also provided adequate protection to the public and ensured that offenders would not commit further crimes. The commission of the offences set out in article 414 by a law enforcement officer was considered an aggravating circumstance and was taken into account by the court when determining punishment. There was thus no chance that law enforcement officers could be afforded preferential treatment or receive a lighter punishment. An internal affairs department investigated cases of police misconduct, but, in order to avoid conflicts of interest, it was not empowered to conduct criminal investigations of police officers, nor was there any intention of empowering it to do so. The same principle applied to other law enforcement agencies and for the same reasons.

48. In general, defendants had to be provided with a lawyer in all cases in which they had been charged with a serious offence that required pretrial detention. The law provided for the option of refusing legal counsel and conducting one's own defence, but defendants resorted to that option very infrequently. A defendant could also hire a private defence lawyer or designate a close relative to conduct his or her defence.

49. The Ministry of Defence of Kazakhstan operated special academies to train military specialists of the armed forces; training was also received abroad at foreign military academies. The staff of all State institutions, including the military, was required by law to undergo initial and refresher training every 3 to 5 years, depending on the institution.

50. As a rule, an injured party was entitled to receive compensation for material and moral harm. By law, persons who believed that they had suffered material or moral harm were also entitled to receive compensation, irrespective of whether they were recognized as an injured party in a criminal case; they were entitled to bring civil proceedings to seek compensation.

51. Under current legislation, political asylum was granted by presidential decree. Decisions to grant refugee status were made in accordance with criteria established by the Office of the United Nations High Commissioner for Refugees and the Office of the United Nations High Commissioner for Human Rights.

52. **Mr. Abishev** (Kazakhstan) said that training courses in human rights were offered at academies under the Ministry of Defence and the Office of the Procurator General. The Human Rights Commissioner, in cooperation with the local offices of the United Nations Development Programme and the Organization for Security and Cooperation in Europe, organized annual seminars and training sessions in national and international human rights instruments for staff members of the Ministry and other governmental agencies throughout Kazakhstan.

53. **Mr. Yakushiji** said that he wished to thank the delegation for its frank and comprehensive answers to the Committee's questions. The broad range of issues addressed during the interactive dialogue had provided the Committee with a greater understanding of the implementation of the Convention in the State party and the legislative, administrative and judicial measures that were still lacking.

54. **Mr. Hazan** said that he wished to invite the State party to pursue its dialogue with the Committee beyond the receipt and implementation of the Committee's concluding observations. That would allow it to continue making progress in recognizing the human rights of all persons residing in Kazakhstan.

55. **Mr. Zhakupov** (Kazakhstan) said that he wished to thank the Committee for its questions and comments, which would provide useful guidance to his country in ensuring the rights and freedoms of the people of Kazakhstan and in continuing its efforts to build a State based on the rule of law.

56. **The Chair** said that, as one of the first States in its region to ratify the Convention, Kazakhstan was leading the way in demonstrating the universal scope and important preventive role played by the Convention. The two meetings that had been held with the State party at the current session represented only the first stage of the dialogue that the Committee hoped to pursue with the State party.

The meeting rose at 12.55 p.m.